

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY OF DEARBORN HEIGHTS,  
  
Plaintiff-Appellant,

UNPUBLISHED  
September 16, 2014

v

No. 315660  
Wayne Circuit Court  
LC No. 12-015619-CH

WAYNE COUNTY TREASURER, WAYNE  
COUNTY, B&D FAMILY HOLDINGS, LLC, and  
NSTAR COMMUNITY BANK,

Defendants-Appellees.

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In re Petition of WAYNE COUNTY TREASURER  
for Foreclosure.

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WAYNE COUNTY TREASURER,  
  
Petitioner-Appellee,

v

No. 315667  
Wayne Circuit Court  
LC No. 11-007010-CH

CITY OF DEARBORN HEIGHTS,  
  
Appellant.

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Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

These consolidated appeals concern property at 2525 S. Beech Daly Road in the city of Dearborn Heights (the property). In Docket No. 315660, Dearborn Heights appeals as of right the trial court's order granting summary disposition in favor of defendant, B&D Family Holdings, LLC (B&D), in its quiet title suit involving the property. In Docket No. 315667, Dearborn Heights appeals as on leave granted the trial court's order denying its motion to

intervene in the tax foreclosure suit involving the property.<sup>1</sup> We reverse and remand for further proceedings in both appeals.

## I. FACTS

On June 14, 2011, the Wayne County Treasurer (the Treasurer) petitioned to foreclose the property for delinquent 2009 taxes, interest, fees, and penalties. On March 30, 2012, the trial court granted the petition and entered a judgment of foreclosure. The trial court entered the judgment on April 2, 2012.

On July 3, 2012, the Treasurer e-mailed Dearborn Heights a list of foreclosed properties available for purchase. The list included the property. The email informed Dearborn Heights that the Treasurer retained the right to remove any property from the list at any time, for any reason, before issuing a deed.

On July 18, 2012, Dearborn Heights informed the Treasurer that it wanted to purchase the property. On July 25, 2012, a Dearborn Heights employee attempted to deliver a check for the property and was informed that the property was no longer for sale because the Treasurer and B&D had entered into a payment plan agreement. On November 27, 2012, Dearborn Heights filed a complaint against the Treasurer, Wayne County, B&D, and NStar Community Bank. Dearborn Heights asserted breach of contract and quiet title, and sought specific performance or a writ of mandamus compelling the Treasurer to accept payment for the property and to convey the property to Dearborn Heights.

On December 11, 2012, in the foreclosure case, the Treasurer filed a certificate of redemption. On January 4, 2013, the trial court entered an amended ex parte order that vacated the foreclosure judgment nunc pro tunc.

On February 11, 2013, B&D moved for summary disposition in the quiet title action under MCR 2.116(C)(10). B&D alleged that Dearborn Heights had no right to the property because it had redeemed the property under the installment payment agreement with the Treasurer and the trial court had vacated the foreclosure. The Treasurer filed a motion that agreed with B&D's motion. On March 1, 2013, Dearborn Heights responded by arguing that B&D had not timely redeemed the property and that there were issues of material fact regarding the payment plan.

On February 27, 2013, Dearborn Heights moved to intervene in the foreclosure action, and attached a motion for relief from the trial court's ex parte order. Dearborn Heights argued that the trial court did not have authority to enter its ex parte order. On March 8, 2013, the trial court denied Dearborn Heights's motion to intervene. The trial court briefly stated that Dearborn Heights did not have standing to intervene. It then decided that Wayne County had authority to

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<sup>1</sup> *In re Petition of Wayne Co Treasurer for Foreclosure*, unpublished order of the Court of Appeals, entered October 11, 2013 (Docket No. 315667).

enter into payment agreements, and that Dearborn Heights had no “standing to intervene in tax foreclosure cases before this court before the tax foreclosure process has fully completed itself.”

On March 8, 2013, in the quiet title action, the trial court granted B&D’s motion for summary disposition. The trial court ruled that Dearborn Heights’s quiet title action was a collateral attack on the tax foreclosure action, which had been resolved between the Treasurer and B&D.

## II. INTERVENTION (DOCKET NO. 315667)

### A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court’s decision on a motion to intervene.<sup>2</sup> The trial court abuses its discretion when its outcome falls outside the range of principled outcomes.<sup>3</sup>

### B. LEGAL STANDARDS

“Intervention is an action where a third party becomes a party in a suit that is pending between others.”<sup>4</sup> MCR 2.209 provides two rules for intervention:

**(A) Intervention of Right.** On timely application a person has a right to intervene in an action:

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(3) when the application claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

**(B) Permissive Intervention.** On timely application a person may intervene in an action

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(2) when an applicant’s claim or defense and the main action have a question of law or fact in common.

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<sup>2</sup> *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009).

<sup>3</sup> *Id.*

<sup>4</sup> *Hill v L F Transp, Inc*, 277 Mich App 500, 508; 746 NW2d 118 (2008).

### C. APPLYING THE STANDARDS

Dearborn Heights contends that the trial court erred when it denied its motion to intervene as of right. We agree.

Courts should liberally construe intervention to allow intervention.<sup>5</sup> “[T]he court rule makes no reference as to whether the party seeking intervention has a meritorious claim, only that it has a claim.”<sup>6</sup>

Here, the trial court denied Dearborn Heights’s motion after concluding that Dearborn Heights did not have an actual interest in the property. This approach improperly considered the merits of Dearborn Heights’s claim. The trial court did not decide whether Dearborn Heights *claimed* an interest in the property or whether the parties adequately represented that interest.

Dearborn Heights claimed that Wayne County’s use of payment agreements was not statutorily permissible and deprived it of its statutory opportunity to purchase the property. Regardless of whether Dearborn Heights had an actual interest in the property, Dearborn Heights certainly claimed an interest *relating to* the property. And neither B&D nor Wayne County were situated to protect Dearborn Heights’s interest because neither party wanted to challenge the validity of the payment agreement.

Further, it is clear from the trial court’s decision on B&D’s motion for summary disposition in the related case that denying Dearborn Heights’s motion to intervene did *actually* impair Dearborn Heights’s ability to protect its potential interest as a practical matter. The trial court’s decision to deny intervention resulted in summary disposition in the quiet title action, a case which involved the same subject matter and legal questions.

We conclude that the trial court abused its discretion when it denied Dearborn Heights’s motion to intervene. The trial court’s decision fell outside the range of principled outcomes because it deprived Dearborn Heights of the opportunity to protect its potential interest in the property that was the subject of the foreclosure action. The motion for intervention was not the proper place for the trial court to decide the merits of Dearborn Heights’s claim that it had an actual interest in the property.

### III. COLLATERAL ATTACK (DOCKET NO. 315660)

#### A. STANDARD OF REVIEW

This Court reviews de novo issues of law.<sup>7</sup>

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<sup>5</sup> *Precision Pipe & Supply, Inc v Meram Constr, Inc*, 195 Mich App 153, 156; 489 NW2d 166 (1992).

<sup>6</sup> *Hill*, 277 Mich App at 509.

<sup>7</sup> *The Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 43; 698 NW2d 900 (2005).

## B. LEGAL STANDARDS

It is well-established in Michigan that a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding:

The final decree of a court of competent jurisdiction made and entered in a proceeding of which all parties in interest have due and legal notice and from which no appeal is taken cannot be set aside and held for naught by the decree of another court in a collateral proceeding commenced years subsequent to the date of such final decree.<sup>[8]</sup>

## C. APPLYING THE STANDARDS

Dearborn Heights contends that the trial court improperly granted Wayne County's motion for summary disposition in the quiet title action because the action was not an improper collateral attack on the foreclosure action. We agree that the trial court erred when it determined that the quiet title suit was an improper collateral attack on the foreclosure action. But we decline to address the issues presented on their merits.

Here, the trial court ruled that Dearborn Heights's quiet title action was a collateral attack on the tax foreclosure action, which had been resolved between the Treasurer and B&D. However, Dearborn Heights filed the quiet title action before the foreclosure suit was resolved. Further, Dearborn Heights was not a party in interest in the foreclosure proceeding, and did not have "due and legal notice" of the proceedings in that case. We conclude that the trial court erred when it applied the doctrine of collateral attack under these circumstances.

Wayne County contends that this Court may affirm the trial court's decision because it reached the correct result on the merits. We decline to affirm the trial court's decision on this ground. The trial court's brief decisions in both cases did not address Dearborn Heights's alleged disputes of fact and did not provide any reasoning to support the trial court's decision of law. This Court is not in a position to determine the merits of this case because unresolved legal and factual issues in the foreclosure action may affect the outcome of Dearborn Heights's quiet title action.

## IV. CONCLUSION

In Docket No. 315667, we conclude that the trial court abused its discretion when it denied Dearborn Heights's motion to intervene in the foreclosure action. In Docket No. 315660, we conclude that the trial court improperly granted summary disposition in the quiet title action. We decline to address the issues presented on the merits because this Court's decision would benefit from a resolution of factual issues a decision by the trial court.

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<sup>8</sup> *Dow v Scully*, 376 Mich 84, 88-89; 135 NW2d 360 (1965), quoting *Loesch v First National Bank of Ann Arbor*, 249 Mich 326, 329-330; 228 NW 717 (1930).

We reverse and remand in both dockets. We do not retain jurisdiction. As the prevailing party, Dearborn Heights may tax costs.<sup>9</sup>

/s/ William B. Murphy  
/s/ William C. Whitbeck  
/s/ Michael J. Talbot

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<sup>9</sup> MCR 7.219.